



W.P.No.9794 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20/12/2023
Pronounced on	13/06/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.9794 of 2015

B. Prabhakar

...

Petitioner

Vs

1. The General Manager,
Tamil Nadu Civil Supplies Corporation,
Kilpauk, Chennai-600010.

2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Cuddalore Region, Cuddalore.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Na.Ka.No.AE9/74966/2009 dated 11.09.2013 and quash the same and direct the respondents to appoint the petitioner on compassionate grounds in any suitable post in the Tamil Nadu Civil Supplies Corporation commensurate with his qualifications and grant him all consequential benefits.



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For petitioner ... Mr.P.Manoj Kumar

For respondents ... Mr.S.Senthil Kumar

O R D E R

This Petition is filed seeking for certiorarified Mandamus to quash the impugned order in Na.Ka.No.AE9/74966/2009 dated 11.09.2013 and direct the respondents to appoint the petitioner on compassionate grounds in any suitable post.

2. The petitioner's father by name A. Bhaskar was appointed as Helper in Tamil Nadu Civil Supplies Corporation (TNCSC) in the year 1995. In the year 2008 when he was working as Bill Clerk in Cuddalore Region, he suffered severe neurological disorders and he was diagnosed with Multi Infarct Dementia, Parkinson's Disease and Memory Impairment. On account of his illness, he was not able to discharge his duties, thereby he has submitted his representation to Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Cuddalore Region (the second respondent) on 15.04.2008 to relieve him on medical invalidation and grant compassionate appointment to any one of his two sons including the petitioner. The petitioner' father was born on 06.06.1955 and he has submitted his request to discharge him on Medical Invalidation grounds,by that time he has not completed 53 years of age.



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3. The second respondent by way of proceedings in Na.Ka.No.E3/948/09 dated 16.02.2009, requested to the Medical Board, Government Headquarters Hospital, Cuddalore to examine the petitioner's father and send a report as to whether he is fit for the job or whether he can be medically invalidated. Petitioner's father appeared before the Medical Board on 07.03.2009. The Joint Director of Medical and Rural Health Services, Cuddalore sent a communication to the Dean, Government General Hospital, Chennai, dated 07.05.2009, stating that the petitioner's father required complete neurological assessment for medical invalidation and requested petitioner's father to be examined on a convenient date. Petitioner's father appeared before the Medical Board at Government General Hospital, Chennai on 10.06.2009 and the hospital gave a report on 19.06.2009. Basing on the medical invalidation report given by the Medical Board, Chennai dated 19.06.2009, the second respondent passed order in Na.Ka.No.E5/948/2009 dated 10.08.2009, retiring him on medical invalidation.

4. However the request of the petitioner's father to appoint any one his sons on compassionate grounds after invalidating him on medical grounds was not considered. Petitioner's father submitted a representation to the second respondent on 12.08.2009 for compassionate appointment. The second



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respondent by was of proceedings in Na.Ka.No.E3/948/09 dated 12.02.2010

appointed Mr.S.Sankaralingam, Assistant Manager as an Enquiry Officer to enquire the veracity of the claim made by the petitioner's father seeking to appoint the petitioner on compassionate grounds. In the meanwhile, the father of the petitioner died on account of illness. Subsequent to petitioner's father's death, the petitioner has also submitted representation requesting the respondents to appoint the petitioner on compassionate grounds. However, the second respondents by way of proceedings in Na.Ka.No.E3/948/2009, dated 22.08.2011, issued an order rejecting the petitioner's request on the ground that as per the regulations of the Board compassionate appointment can be granted to children of employees who retire on medical invalidation within 53 years of age. As on the date of obtaining medical invalidation certificate, the petitioner; father was aged 54 years and 13 days. The petitioner subsequently, made several representations seeking appointment on compassionate grounds. As there was no response, the petitioner has filed this Writ petition.

5. It is submitted by the learned counsel for the petitioner that the proceedings of the respondents rejecting the petitioner's request to appoint him on compassionate grounds is erroneous as the petitioner's father has approached the respondents and filed application for appointment on compassionate



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grounds on 15.04.2008, and by that time, the petitioner was within 53 years of age as he was born on 06.06.1955. It is submitted that the time taken for administrative delay in processing the application cannot be the ground for denying the appointment to the petitioner.

6. No counter was filed by the respondents.

7. Heard both sides and perused the records.

8. As per the circular issued on 04.05.2020 vide Rc.No.AE9/10159/2020 the persons whose legal heirs are eligible for consideration under compassionate ground for appointment shall submit the application for the Government servants who retires on medical invalidation within the age of 53 years. It is the contention of the respondents that the request of the petitioner and petitioner's father for appointing the petitioner on the ground of medical invalidation could not be considered as on the date of obtaining medical invalidation certificate, petitioner's father was aged about 54 years and 13 days and thereby since he has crossed 53 years of age, the petitioner was not considered for appointment on compassionate ground. As per the proceeding filed by the respondents dated 11.09.2013 in



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Na.Ka.AE9/74966/2009, it is mentioned that the petitioner has submitted representation for compassionate appointment on the ground of medical invalidation and as on the date of making such representation the petitioner's father was aged about 52 years, 10 months and 13 days. However, it is mentioned further that by that time, the medical invalidation certificate was issued, he was aged about 54 years and 13 days, thereby the request of the petitioner cannot be considered. By way of this impugned order the request of the petitioner was rejected.

9. On considering the contents of this impugned order, it is clear that as on the date of making representation by father of the petitioner, the petitioner's father was less than 53 years. It is an admitted fact that even though, the petitioner's father has made an application for his medical invalidation on 15.04.2008, the file was initiated only on 16.02.2009 and a letter was addressed to Medical Board, Government Hospital Cuddalore, to examine his father. The Medical Board, Cuddalore has directed the petitioner's father to appear for medical examinations on 07.03.2009, on which the petitioner's father appeared for medical examination. Upon examination, the Medical Board has found that petitioner's father was suffering from neurological disorders and thereby he has to be assessed by the Government Hospital,



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Chennai. Accordingly, a letter was addressed to Government Hospital, Chennai, by Government Hospital Cuddalore. Finally, the Medical Board at Government Hospital, Chennai has conducted, the medical examinations on 10.06.2009 and gave medical invalidation report on 19.06.2009 that means after submission of application on 15.04.2008, until 19.06.2009, it took about more than one year and two months period and the said period is crucial. According to the respondent, by that time the medical invalidation certificate was issued on 19.06.2009, the petitioner's father has crossed 53 years, thereby compassionate appointment cannot given. On the other hand, it is submitted by the learned counsel for the petitioner that since, the petitioner is not responsible for the delay caused, he shall not be deprived of his right for getting appointment on compassionate ground.

10. The proceedings as narrated above from the date of filing of the application on 15.04.2008 until the issuance of medical invalidation certificate to the father of the petitioner, there is no role played by the petitioner for causing delay. In fact, on all the occasions, whenever the petitioner's father was directed to appear before the Medical Board for medical examination, he has appeared without fail. It is the respondents/ Government hospital, Cuddalore, and Government Hospital, Chennai, who have taken time in issuing various



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proceedings and ultimately, giving a medical invalidation certificate. Therefore, it is clear that the delay is caused not on account of the petitioner but only on account of the respondents and the hospital administrations. Once, the delay is caused not on account of the petitioner, and since the petitioner has approached the respondent authorities well before petitioner's father has attained the age of 53 years, the petitioner shall be given benefit of the compassionate appointment on the ground of medical invalidation.

11. A circular issued in respect of the appointment of children also did not specifically speaks that as on the date of issuance of medical invalidation certificate by the hospital authorities, the government employee shall be within 53 years of age. Once the petitioner father has decided to retire on medical invalidation on account of ailment, he has made application on 15.04.2008, therefore, the crucial date to be considered whether on 15.04.2008, the father of the petitioner was within the age of 53 years or not. As already observed, considering the date of birth of petitioner's father as 06.06.1955, he was well within 53 years and more precisely even according to respondents, the petitioner's father was 52 years, 10 months and 13 days as on the date of making application. During the course of processing the application of considering the medical invalidation, a delay occurred or not is irrelevant, since



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the petitioner's father has approached well within attaining the age of 53 years, the petitioner shall be given benefit of compassionate appointment on medical invalidation scheme.

12. The learned counsel for the petitioner has brought to the notice of this Court, the decision of this Court decided in W.P.(MD) No.3909 of 2016, wherein it is observed that since the delay caused in processing the medical examination, the petitioner therein shall not be penalised, thereby, a direction was given to consider the case of the petitioner therein within four weeks.

13. Considering the discussion made above and also taking into consideration of the Judgment of this Court in W.P.(MD) No.3909 of 2016, the petitioner is entitled for relief as prayed for. It is to be noted that this Writ Petition is filed in the year 2015. As on the date of filing of the Writ Petition, the petitioner was 32 years old. Now, the petitioner must be aged about 41 years. Therefore the respondents while considering the petitioner for providing of an employment on compassionate ground, the time taken for the petitioner from the date of filing of the Writ petition to the date of disposal has to be excluded. That means, the petitioner age has to be considered as 32 and having 41 years shall not be treated as disqualification for appointment, if he is otherwise



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eligible.

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14. Accordingly, this Writ petition is allowed, impugned proceedings issued by the first respondent in Na.Ka.No.AE9/74966/2009 dated 11.09.2013 are hereby quashed, consequently the respondents are directed to appoint the petitioner on compassionate ground in any suitable post in Tamil Nadu Civil Supplies Corporation (TNCSC), as per prevailing scheme. No costs.

13.06.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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To

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2. The Senior Regional Manager,
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Dr.D.NAGARJUN, J.

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Pre-delivery order made in

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13/6/2024